

Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

G. R. No. L-74027 December 7, 1989

SILAHIS MARKETING CORPORATION, petitioner

vs.

INTERMEDIATE APPELLATE COURT and GREGORIO DE LEON, doing business under the name and style of **"MARK INDUSTRIAL SALES"**, respondents.

Jaime V. Villanueva for petitioner.

Tinga, Fuentes, Tagle & Malate for private respondent.

FERNAN, C.J.

Petitioner Silahis Marketing Corporation seeks in this petition for review on certiorari a reversal of the decision of the then Intermediate Appellate Court (IAC) in AC-G.R. CV No. 67162 entitled "De Leon, etc. v. Silahis Marketing Corporation", disallowing petitioner's counterclaim for commission to partially offset the claim against it of private respondent Gregorio de Leon for the purchase price of certain merchandise.

A review of the record shows that on various dates in October, November and December, 1975, Gregorio de Leon (De Leon for short) doing business under the name and style of Mark Industrial Sales sold and delivered to Silahis Marketing Corporation (Silahis for short) various items of merchandise covered by several invoices in the aggregate amount of P 22,213.75 payable within thirty (30) days from date of the covering invoices. Allegedly due to Silahis' failure to pay its account upon maturity despite repeated demands, de Leon filed before the then Court of First Instance of Manila a complaint for the collection of the said accounts including accrued interest thereon in the amount of P 661.03 and attorney's fees of P 5,000.00 plus costs of litigation.

The answer admitted the allegations of the complaint insofar as the invoices were concerned but presented as affirmative defenses; [a] a debit memo for P 22,200.00 as unrealized profit for a supposed commission that Silahis should have received from de Leon for the sale of sprockets in the amount of P 111,000.00 made directly to Dole Philippines, Incorporated by the latter sometime in August 1975 without coursing the same through the former allegedly in violation of the usual practice concerning sale of merchandise to Dole Philippines, Inc.; and [b] Silahis' claim that it is entitled to return the stainless steel screen covered by Exhibits '6-A' and '6-B' which was found defective by its client, Borden International, Davao City, and to have the corresponding amount cancelled from its account with de Leon.

In a decision dated August 25, 1978,¹ the lower court confirmed the liability of Silahis for the claim of de Leon but at the same time ordered that it be partially offset by Silahis' counterclaim as contained in the debit memo for unrealized profit and commission. Judge Bienvenido C. Ejercito of said court held:

There is no question that the defendant received from the plaintiff the items contained in Exhs. 'A' to 'F'. The only question is whether or not the defendant is entitled to set off against the claim of the plaintiff the amount contained in the debit memo of the defendant, Exh. '1', and whether or not the defendant is entitled to return the steel wire mesh which was returned to them by Borden Philippines, as shown by Exhs. '6-A' and '6-B'. The Court believes that the defendant is properly chargeable for the amounts of the unpaid invoices set forth in the complaint. However, the Court also believes that the plaintiff is also properly chargeable for the debit memo of P 22,200.00, Exh. '1'. This is because it was proven by the defendant from the testimonies of Isaias Fernando, Jr. and Jose Joel Tamon that contrary to the agreement between plaintiff and defendant that the latter was to serve the account of Dole Philippines in Davao, the plaintiff made a direct sale of sprockets for P 111,000.00 which thereby deprives the defendant of its corresponding commission for P 22,200.00 which the defendant would have otherwise made if the plaintiff had followed its previous arrangement with the

defendant. However, as to the counterclaim of the defendant for a cancellation of the amount of P 6,000.00 for defective stainless screen wire purchased and intended for Borden International, Davao City, the Court believes that it is much too late now to present said claim because the purchase was made and delivered as early as December 22, 1975 and the proposed return to the defendant by Borden was made on April 1, 1976 only. The Court is not ready to award damages to any of the parties. After deducting the amount of P 22,200.00, which is the unpaid commission of the defendant from the principal total amount of the unpaid invoices of the plaintiff of P 22,213.75, the unpaid balance in favor of the plaintiff is P 13.75. The claim for interest and attorney's fees of the plaintiff may be offset against the interest and attorney's fees of the defendant.

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant ordering the defendant to pay to the plaintiff the amount of P 13.75, with interest at 12% per annum from the date of the filing of the action on July 1, 1976 until fully paid, without pronouncement as to costs.

SO ORDERED. ²

De Leon appealed from the said decision insofar as it directed partial compensation and its failure to award interest on his principal claim as well as attorney's fees in his favor. In a decision dated March 17, 1986, ³ respondent Intermediate Appellate Court ⁴ set aside the decision of the lower court and dismissed herein petitioner's (therein defendant-appellee's) counterclaim for lack of factual or legal basis. The appellate court found that there was no agreement, verbal or otherwise, nor was there any contractual obligation between De Leon and Silahis prohibiting any direct sales to Dole Philippines, Inc. by de Leon; nor was there anything in the debit memo obligating de Leon to pay a commission to Silahis for the sale of P 111,000.00 worth of sprockets to Dole Philippines although in the past, the former did supply certain items to the latter for delivery to Dole Philippines, Incorporated.

Hence, in this petition for review on certiorari, the central issue is whether or not private respondent is liable to the petitioner for the commission or margin for the direct sale which the former concluded and consummated with Dole Philippines, Incorporated without coursing the same through herein petitioner.

We have carefully gone over the record of this case particularly the debit memo upon which petitioner's counterclaim rests and found nothing contained therein to show that private respondent obligated himself to set-off or compensate petitioner's outstanding accounts with the alleged unrealized commission from the assailed sale of sprockets in the amount of P 111,000.00 to Dole Philippines, Inc.

It must be remembered that compensation takes place when two persons, in their own right, are creditors and debtors to each other. Article 1279 of the Civil Code provides that: "In order that compensation may be proper, it is necessary: [1] that each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other; [2] that both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated; [3] that the two debts be due; [4] that they be liquidated and demandable; [5] that over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor.

When all the requisites mentioned in Art. 1279 of the Civil Code are present, compensation takes effect by operation of law, even without the consent or knowledge of the creditors and debtors. ⁵ Article 1279 requires, among others, that in order that legal compensation shall take place, "the two debts be due" and "they be liquidated and demandable." Compensation is not proper where the claim of the person asserting the set-off against the other is not clear nor liquidated; compensation cannot extend to unliquidated, disputed claim existing from breach of contract. ⁶

Undoubtedly, petitioner admits the validity of its outstanding accounts with private respondent in the amount of P 22,213.75 as contained in its answer. But whether private respondent is liable to pay the petitioner a 20% margin or commission on the subject sale to Dole Philippines, Inc. is vigorously disputed. This circumstance prevents legal compensation from taking place.

The Court agrees with respondent appellate court that there is no evidence on record from which it can be inferred that there was any agreement between the petitioner and private respondent prohibiting the latter from selling directly to Dole Philippines, Incorporated. Definitely, it cannot be asserted that the debit memo was a contract binding between the parties considering that the same, as correctly found by the appellate court, was not signed by private respondent nor was there any mention therein of any commitment by the latter to pay any commission to the former involving the sale of sprockets to Dole Philippines, Inc. in the amount of P 111,000.00. Indeed, such document can be taken as self-serving with no probative value absent a showing or at the very least an inference, that the party sought to be bound assented to its contents or showed conformity thereto.

In fact the letter written by private respondent's lawyer dated March 5, 1975 ⁷ in reply to petitioner's letter dated February 19, 1976 transmitting its Debit Memo No. 1695 ⁸ further strengthens private respondent's stand that it never agreed to give petitioner any commission on the direct sale to Dole Philippines, Inc. by its company because said letter

denied any utilization of petitioners personnel and facilities at its Davao Branch in the transaction with Dole Philippines, Inc. which would otherwise lend a basis for petitioner's monetary claim.

WHEREFORE, in view of the foregoing, the questioned decision of respondent appellate court is hereby AFFIRMED.

SO ORDERED.

Gutierrez, Jr., Feliciano and Cortes, JJ., concur.

Bidin, J., took no part.

Footnotes

1 Record on Appeal, pp. 11-17.

2 Record on Appeal, pp. 16-17.

3 Rollo, pp, 26-34.

4 Fourth Civil Cases Division, Veloso, J., ponente; Sison, Bidin, Britanico, Bellosillo, JJ., concurring.

5 Art. 1290, Civil Code.

6 International Corporate Bank, Inc. v. Intermediate Appellate Court, et al., G.R. No. 69560, June 30, 1988.

7 Exh.'G' Record on Appeal, Exhibit Folder, p. 7.

8 Exh. '2', Record on Appeal, Exhibit Folder, p. 20.